

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANTE D. WILLIAMS,

Defendant.

4:19-CR-3011

ORDER

This matter is before the Court on the defendant's motion to extend the limitation period for filing a motion pursuant to [28 U.S.C. § 2255](#) ([filing 720](#)). The Court will deny that motion because it is premature.

A [§ 2255](#) motion must generally be filed within 1 year from "the date on which the judgment of conviction becomes final." [§ 2255\(f\)\(1\)](#). When a defendant appeals, the judgment of conviction becomes final when the time expires for filing a petition for certiorari with the Supreme Court contesting the appellate court's affirmation of the conviction. *Clay v. United States*, [537 U.S. 522, 525 \(2003\)](#).

In this case, the defendant was sentenced on June 29, 2021, and judgment was entered the same day. [Filing 651](#). A notice of appeal was filed on July 6. [Filing 667](#). That appeal was docketed in the U.S. Court of Appeals for the Eighth Circuit as No. 21-2489, [filing 674](#), where it remains pending. And the defendant cannot pursue postconviction relief while his direct appeal is still pending. See *United States v. Jagim*, [978 F.2d 1032, 1042 \(8th Cir. 1992\)](#); *Masters v. Eide*, [353 F.2d 517, 518 \(8th Cir. 1965\)](#).

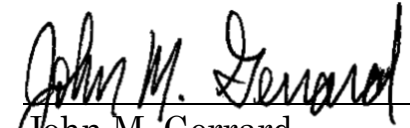
In other words, the Court cannot and need not extend the 1-year period for filing a [§ 2255](#) motion, because that period hasn't even started yet. It won't

start until 90 days after the Court of Appeals affirms the defendant's conviction and sentence, *if* that's what the Court of Appeals decides to do *and* the defendant doesn't petition the U.S. Supreme Court for a writ of certiorari. See [U.S. Sup. Ct. R. 13\(3\)](#). And as long as the defendant's direct appeal remains pending, he cannot file a § 2255 motion. Accordingly,

IT IS ORDERED that the defendant's motion to extend ([filing 720](#)) is denied.

Dated this 23rd day of May, 2022.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge